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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1308

UNITED MINE WORKERS OF AMERICA, *Petitioner,*

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, a/k/a/ INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT DISTRICT 50 IN OPPOSITION

QUESTION PRESENTED

Whether a formerly affiliated labor organization and its members may be presently held liable on a note to its former parent labor organization when the note was negotiated while the affiliated organization was without independent counsel, under the domination and control of the parent organization, and where the transaction was not at arm's length.

STATUTORY PROVISIONS

In addition to the statutory provisions cited by petitioner (Pet. Br. pp. 3-4), the following portion of the Landrum-Griffin Act, Title I, § 105, 29 U.S.C. 415, is also relevant:

> "Every labor organization shall inform its members concerning the provisions of this Act."

STATEMENT OF THE CASE

A. The Facts

In 1936, petitioner, the United Mine Workers, established respondent District 50 both as a vehicle to organize employees in related industries and also as a buffer against raids from other unions (App. 12a).[1] District 50 was required to make payments to the parent organization which appointed and paid all its officers (App. 12a, 32a). However, it was given no voice in the UMWA's affairs.

To finance the expanding organizational activities of District 50, activities which were primarily for the benefit of the parent organization, the United Mine Workers advanced large sums of money to District 50 which it carried on its account books as "loans" to respondent (App. 12a-13a, 29a-30a). Correspondingly, dues in District 50 were set lower than those assessed against regular United Mine Workers members in order to make District 50 membership "as attractive as possible" to outside employees (App. 13a). As a consequence, about one-third of the money loaned by the United Mine Workers to District 50 had to be returned to the Mine Workers in payment of District

[1] References are to the Appendix to the Petition for Certiorari.

50's per capita tax to the parent organization (App. 14a). This resulted in

> "an outstanding and fantastic method of financing by which the debtor borrowed money from his creditor in order to pay his debt to the creditor." (App. 4a, 16a).

This state of affairs continued from 1936 to 1961, at which time the parent had "loaned" District 50 approximately $23,000,000 and had received approximately $14,000,000 in payments from District 50 (App. 16a).

In 1959, Congress passed the Labor-Management Reporting and Disclosure Act, which codified for all union members certain basic rights within their unions, including equal rights to participate in elections and meetings. Members of District 50, although outnumbering all the rest of the members of the United Mine Workers almost 2 to 1, had had no such rights (App. 17a). To avoid a take-over by District 50, petitioners then decided that District 50 was to become independent, but remain affiliated with it. In 1961, preliminary negotiations were begun between the Mine Workers on the one hand, and District 50 President A. D. Lewis (the brother of UMW President John L. Lewis, appointed and paid by the Mine Workers) and the Executive Board of District 50 (who had also been appointed by the Mine Workers) on the other (App. 17a-18a). These negotiations culminated in an oral agreement that District 50 would pay back the money "loaned" it by the Mine Workers (App. 18a).

On January 24, 1962 District 50 President Lewis died. Two days later the remaining management of District 50 was approached by the Mine Workers and

asked to sign three documents prepared by the Mine Workers.[2] One document, called the Articles of Affiliation, gave District 50 the right to use the name "District 50, United Mine Workers of America," upon the payment to the UMW of ten cents per member per month. It was subject to termination upon thirty days written notice by either party. The second document stipulated that District 50 owed the Mine Workers approximately $8,800,000, the difference between the amounts "loaned" to District 50 and District 50's payments to the Mine Workers. This was to be paid by an assessment of forty cents per member per month. The third document was a promissory note in the amount of approximately $8,800,000 providing that upon default in monthly payments, the entire amount would become due (App. 5a-7a).

There was "little if any negotiation over the terms of this agreement." District 50, which was at the time unrepresented by independent counsel, signed. Later, in 1962, the Mine Workers approved a moratorium on the forty cent payments due to the financial difficulties of District 50. In 1963 payments resumed but at a lower rate. In August, 1964, they ceased.[3] The United Mine Workers subsequently, in 1968, cancelled its affiliation agreement with District 50 over its displeasure with the latter's favoring industrial uses for atomic energy, and shortly thereafter filed this suit on the promissory note (App. 19-20a).

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[2] Upon the death of A.D. Lewis, Elwood Moffett, then Vice-President of District 50 ascended automatically to the presidency. Relations between A.D. Lewis and Moffett had been "strained" and Moffett "had not been a party to the negotiations between UMW officers and A.D. Lewis" (App. 18a).

[3] The ten cent affiliation fee continued to be paid by District 50 to the UMWA until March 6, 1968 (App. 20a).

B. The Court Proceedings Below

On the above facts the District Court concluded that the United Mine Workers possessed an enforceable promissory note and entered judgment for the balance due, $8,000,664.27 (App. 8a-9a). The Court of Appeals for the District of Columbia Circuit reversed. It viewed the issue not merely as "a simple action on a promissory note" but as a "special" question presented by the almost unique facts of this case involving "the proper relationship between the main union and the portion preparing for a separation intended by the parent union to avoid the [Landrum-Griffin] statutory requirement of on-going equality." (App. 20, 23a). What was necessary, the Court concluded,

> ". . . is at least some reasonable balance (not necessarily complete equality) of bargaining position during preparation for reorganization, sufficient to give enduring vitality to the agreement as one reached by an independent union." (footnote omitted) (App. 23a).

The Court of Appeals found such balance lacking on the particular and novel facts of this case. It pointed out that District 50 became independent only at the cost of accepting responsibility for a debilitating $8 million debt, a debt "hardly consistent with independent viability", and a debt created by the Mine Workers primarily to further its own interests (App. 24a-25a). This debt was created under the Mine Workers "autocratic control" of District 50 from its inception and was agreed to in 1962 by District 50 representatives appointed and paid by the Mine Workers, and who were without independent legal counsel. As aptly stated by both the District Court and the Court of Appeals, the relation of District 50 to the UMWA from

District 50's inception through the time of the execution of the 1962 agreements here in issue was one of "vassal" to master (App. 4a, 15a-16a, 26a-27a).

From the overall implications of the Landrum-Griffin Act, an Act passed to permit members to participate on an equal basis in their Union's affairs and which directs that members be informed by their Unions of their rights under it, the Court ruled that negotiations between parent and a hitherto controlled subsidiary be subject to reasonable balance in bargaining position. The Court also adverted to common law concepts of fiduciary duty and fair dealing, as well as analogizing to the antitrust requirement that a Company, ordered to divest, establish the disaffiliated competitor as a viable market entity. On the unique facts of this case, the Court of Appeals concluded:

> "It would ignore reality, even under the most indulgent reading of the facts, to conclude that the members of District 50 were afforded reasonable protection and balance of bargaining position with other members of the UMWA. Such balance and protection were indispensable to assure the validity of negotiations and on-going agreements aimed at avoiding the primary goal of the Landrum-Griffin equality requirements." (App. 28a).

The Court of Appeals also concluded that it would not order District 50 to return the eight million dollars to the Mine Workers on the equitable theory of unjust enrichment because:

> "The UMW, serving its own purposes, has made resolution of which union benefited to what extent [from the "loans" to District 50] impossible to ascertain. It dominated and ran District 50 in such a manner and to such an extent as to tangle

> the affairs of the two unions beyond any practicable effort by a court at this time to sort, straighten out, and reconstitute." (App. 30a).

In these highly unusual factual circumstances the Court concluded:

> "Since it was the UMW's activities that made it infeasible for a court to ascertain the value of benefit conferred or mold an appropriate order for relief, the UMW is disabled from seeking an equitable remedy." (App. 31a).

ARGUMENT

As a preliminary matter, it is to be noted that the petitioner has fallen into the familiar error of many petitioners to this Court—a failure to specify with particularity what consideration under rule 19 of the Rules of this Court is being invoked to warrant exercise of the discretionary power of the Court to review the decision of the Court of Appeals. There is no claim of conflict in the Circuit Courts. There is no claim of conflict with any decision of this Court. The petition claims that the case involves "important questions concerning fiduciary duties which may be implied from a policy of national labor legislation" (Pet. Br., p. 9). Nowhere, however, is the Court informed as to *why* it should settle the assertedly "important" questions. Finally, the petitioner incants the exercise of the Court's supervisory powers (Pet. Br., p. 13), but fails utterly to demonstrate in what manner the Court of Appeals allegedly "so far departed from the accepted and usual course of judicial proceedings," as to warrant the exercise of this Court's supervisory powers specified in Rule 19.

I.

There Is No Important Federal Question Which Should Be Settled by This Court Because the Court of Appeals' Decision Rests on and Is Limited to a Unique and Non-Recurring Set of Circumstances

The decision below turns on a unique set of facts and circumstances which will, in all likelihood, never be repeated. It is concerned solely with the circumstances under which a dominant union, because of the 1959 passage of the Landrum-Griffin Act, "spins off" a subordinate organization, which had hitherto had no independent voice in its own affairs, whose leadership had been appointed and paid by the dominant union and at the same time requires in the absence of independent counsel for the subordinate union that the hitherto subordinate and dominated organization become indebted to it for certain sums.

Since 1959, the Landrum-Griffin Act has required that all union members have an equal voice in the operation of their union. Thus, the situation with which District 50 was faced in this case, namely lack of voice in union affairs, will probably not occur again—at least in the unusual set of circumstances disclosed by the record in this case. Indeed, it was to avoid the full implications of giving District 50 the vote that prompted the Mine Workers to devise the atypical procedure of "divestiture" which the Court of Appeals below found to be one-sided.

The Court of Appeals made the limited nature of its opinion clear. It specifically stated:

> "To avoid any misunderstanding, we expressly note that we are not to be taken as passing on the situation of independent locals or labor organi-

> zations, in which the rule of equality is respected, who voluntarily enter into or continue a status as an affiliate of a national or international labor organization." (App. 22a, fn. 5).

Consequently, Petitioner's sweeping denunciation of the opinion as "[placing] an onerous burden upon all international labor organizations in their day-to-day agreements with subordinate labor organizations" (Pet. Br. p. 10) is completely without merit. The Court of Appeals was careful to limit its decision to cases involving the unusual facts herein. In short, regardless of the correctness of the Court's decision below, its extremely limited precedential value makes it simply not worthy of consideration by this Court on review.

The fact that the case involves a substantial sum of money and is of importance to the two parties to this proceeding (Pet. Br., p. 9), does not warrant the exercise of this Court's discretionary certiorari jurisdiction. *Layne & Bowler Corp.* v. *Western Well Works,* 261 U.S. 387, 393 (1923); *Rice* v. *Sioux City Cemetery,* 349 U.S. 70, 79 (1955).

II.

The Court of Appeals Reached the Correct Result

The decision below also represents a proper and equitable resolution of the tangled affairs of District 50 brought about by the utilization and subordination of respondent by petitioner for what the Court of Appeals found was essentially petitioner's own purposes. As the Court of Appeals recognized, one of the basic purposes behind the Landrum-Griffin Act was to provide a

substantial measure of control by union members over their own union affairs, including financial matters.[4]

District 50 members here gained this control, a freedom guaranteed by the passage of Federal law, only after they had been saddled with a staggering $8 million debt, so onerous that payment on it was later suspended, renewed at a lower rate, and then finally ended. This debt, in turn, was negotiated by District 50 representatives without independent legal counsel[5] when it was under the financial and operational control of the Mine Workers, the creditor; a debt, moreover, instigated by and primarily for the benefit of the creditor, not the debtor. The inequality of the bargaining power between the parties under these unusual circumstances is obvious. See *F.T.C.* v. *Texaco, Inc.*, 393 U.S. 223, 226, 229 (1968); *Perma-Life Mufflers Inc.*, v. *International Parts Corp.*, 392 U.S. 134, 139-140 (1968). It also gained for petitioner indirectly what Federal law forbade directly: the imposition of financial burdens on District 50 Union members without their having a real opportunity to pass upon the nature of the

[4] As professor Cox has noted: "In equity the large sums of money gathered into the treasuries of labor organizations belongs to the members. The members are entitled to share in the management and expenditure of their funds, and to have a periodic accounting. The officers are fiduciaries charged with handling the funds for the benefit, and in accordance with the instructions, of the members." A. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 823 (1960).

[5] Petitioner unconvincingly argues that District 50's own legal department constituted independent counsel even though its attorneys were hired in the period of "vassalage" of District 50 (Pet. Br., pp. 11-12). Petitioner argues that because one of the attorneys involved is still employed by District 50, his independence is in some way established retroactively.

debt or the terms thereof through an informed and properly represented leadership.

The Court realistically assessed the facts before it and properly concluded that the petitioner was therefore not entitled to relief. It noted that the existence of the debt occurred primarily because the Mine Workers wished a buffer against invading unions, and at the same time a means by which to expand its power and influence without giving up any of its own internal control to another entity. After the passage of Landrum-Griffin, in order to avoid a takeover by its larger, but still subservient affiliate, petitioner hit upon the scheme of granting technical "independence" to District 50, but at the same time mortgaging such independence by creating an $8 million asset with the aid of the "vassal" District 50 officials appointed and paid by it. Petitioner then "called in" the debt, not when payments ceased in 1964, but later when District 50 took a contrary position on labor policy. This debt, so enormous that payments were twice terminated, (App. 20a) "contribut[ed] to a continuance of significant element of the state of 'vassalage' [of District 50] found . . . to have existed before 1962" (App. 26a).

The entire purpose and intent of the passage of Landrum-Griffin was to free employees from such "vassalage" and to substitute basic democratic processes in order to give employees control over their organizations and the funds they paid as dues. The normal result of such legislation in this case would have been to grant members of District 50 an equal voice in petitioner's affairs. Due to District 50's numerically superior membership, a superiority ironically nurtured by petitioner, petitioner decided to give District 50 independence. That was permissible. What was not

permissible was to deny District 50 members some realistic voice over the subsequently negotiated debt, a right intended by Congress, and a right District 50 would have had had it been given an equal voice in the Mine Workers Union. Since petitioner controlled District 50, it had its feet on both sides of the table, and thus had a fiduciary duty to District 50 members to assure that the bargaining over the $8 million debt they were asked to pay had some semblance of an arms-length transaction. Since petitioner breached this fiduciary duty, the liability upon which it seeks to recover should not be enforced.

Petitioner argues that "the fiduciary duties which the Court has impliedly carved out of national labor legislation are unreasonable" (Pet. Br., p. 10). But the only duty found by the Court of Appeals was a duty on the part of the UMWA to insure "that the members of District 50 were afforded reasonable protection and balance of bargaining position with other members of the UMW" (App. 28a). In what way can this basic equitable principle and clear inference from the Landrum-Griffin Act be deemed "unreasonable?"

A unanimous Court of Appeals found that "even under the most indulgent reading of the facts" the petitioner breached this basic duty of fairness (App. 28a). In short, the Court of Appeals found that in the unique factual circumstances the case was not even a close one.

Finally, it is to be noted that the petitioner has not sought certiorari on the issue of "unjust enrichment" covered in Part III of the Court of Appeals decision. That issue is, therefore, not before this Court, nor should it be since it involves no important question of

federal law, no issue of conflict and was resolved by the Court of Appeals on a close analysis of a complicated and unusual set of facts.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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